

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPHINE R. WELCH
Claimant

VS.

W. H. BRAUM, INC.
Self-Insured Respondent

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Docket No. 1,015,716

ORDER

Respondent requests review of the October 19, 2004 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found claimant's accidental injury arose out of and in the course of employment. The ALJ further found the claimant gave timely notice and authorized Dr. George Lucas as claimant's treating physician.

The respondent concedes claimant suffered repetitive injuries to her upper extremities through her last day worked on February 12, 2004. But respondent requests review of whether claimant gave timely notice of her injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

After settling a previous workers compensation claim for carpal tunnel injuries to her upper extremities the claimant became the manager of one of respondent's stores in January 2002. She continued working as the manager until August 23, 2003, when the store closed. Claimant was transferred to a different store and became an assistant manager. As an assistant manager the claimant's job duties included scooping ice cream, stocking and ordering.

After claimant resumed the more physically demanding job duties as an assistant manager, she began noticing problems with her middle finger around December 2003. Claimant, while working, made a brief comment to Carmen Branson, her supervisor, that her hands were hurting. Ms. Branson denied any such conversation. Claimant agreed that she was aware of the procedure to report an accident but did not follow that procedure because she initially thought she might have just twisted a muscle in her finger while working. Claimant's last day worked was February 12, 2004. Claimant quit respondent's employ on February 15, 2004.

On February 25, 2004, the claimant contacted Tina Bearden, in benefits administration, regarding her hands and to see if she could go see a doctor. Claimant stated that she told Ms. Bearden that her finger was hurting and that she did not know whether it was related to her prior injury. In an affidavit, Ms. Bearden stated claimant said that she was having problems from her prior injury and it was her impression the claimant was requesting medical treatment related to her previous injury. Therefore, Ms. Bearden told claimant to contact her attorney.

The injured worker is required to give the employer notice of accident, within 10 days after the date of a work-related accident, or establish just cause for not giving the employer the 10-day notice within 75 days. The method of computing the 10 days requires that intermediate Saturdays, Sundays and legal holidays are to be excluded from the computation.¹

The ALJ concluded the claimant gave timely notice when she contacted Ms. Bearden on February 25, 2004. The claimant was clearly reporting a work-related injury and was requesting medical treatment but there was confusion whether such complaint was related to her previous workers compensation claim. Claimant testified she explained she was experiencing pain in her fingers and that she did not know whether the pain was related to her previous carpal tunnel injuries. Claimant was told to contact her attorney.

Claimant clearly attempted to notify respondent and obtain treatment for a painful condition that developed at work. Respondent's representative quickly made the decision that her condition was related to her previous workers compensation claim that had been settled with future medical treatment foreclosed. The respondent was provided timely notice and the ALJ's Order is affirmed.

Moreover, there is ample evidence to support a finding of just cause based upon claimant's initial confusion regarding whether she had suffered a new injury or whether her symptoms were related to her previous injury. After claimant was abruptly told to contact

¹ *McIntyre v. A. L. Abercrombie, Inc.*, 23 Kan. App. 2d 204, 929 P.2d 1386 (1996), K.S.A. 44-551(b)(1).

her attorney following the February 25, 2004 telephone conversation, she followed that advice and respondent was provided notice on March 8, 2004, well within the 75 days.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.²

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated October 19, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2004.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
John F. Carpinelli, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a(a)(2).